




Basic information	
<b>2009/0157(COD)</b>  COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and creation of a European Certificate of Succession  See also <a href="#">2013/2639(RSP)</a>  <b>Subject</b>  7.40.02 Judicial cooperation in civil and commercial matters	

Key players			
European Parliament	<b>Committee responsible</b>		<b>Rapporteur</b>
	<div>JURI</div> Legal Affairs		LECHNER Kurt (PPE)
			Shadow rapporteur  <a href="#">BERLINGUER Luigi (S&amp;D)</a>  <a href="#">WALLIS Diana (ALDE)</a>  <a href="#">LICHTENBERGER Eva (Verts/ALE)</a>  <a href="#">KARIM Sajjad (ECR)</a>  <a href="#">SPERONI Francesco Enrico (EFD)</a>
			09/11/2009
	<b>Committee for opinion</b>		<b>Rapporteur for opinion</b>
	<div>LIBE</div> Civil Liberties, Justice and Home Affairs		The committee decided not to give an opinion.
Council of the European Union	<b>Council configuration</b>		<b>Meetings</b>
			<b>Date</b>
	Justice and Home Affairs (JHA)		3096
			2011-06-09
	Justice and Home Affairs (JHA)		3172
			2012-06-08
	Justice and Home Affairs (JHA)		3162
			2012-04-26
	Justice and Home Affairs (JHA)		3018
			2010-06-03
European Commission	<b>Commission DG</b>		<b>Commissioner</b>
	Justice and Consumers		REDING Viviane

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Key events			
Date	Event	Reference	Summary
14/10/2009	Legislative proposal published	COM(2009)0154 	<a href="#">Summary</a>
22/10/2009	Committee referral announced in Parliament, 1st reading		
09/06/2011	Debate in Council		
01/03/2012	Vote in committee, 1st reading		
06/03/2012	Committee report tabled for plenary, 1st reading	A7-0045/2012	<a href="#">Summary</a>
12/03/2012	Debate in Parliament		
13/03/2012	Results of vote in Parliament		
13/03/2012	Decision by Parliament		
26/04/2012	Debate in Council		<a href="#">Summary</a>
08/06/2012	Act adopted by Council after Parliament's 1st reading		
04/07/2012	Final act signed		
04/07/2012	End of procedure in Parliament		
27/07/2012	Final act published in Official Journal		

Technical information	
Procedure reference	2009/0157(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	See also <a href="#">2013/2639(RSP)</a>
Legal basis	Treaty on the Functioning of the EU TFEU 081-p2
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	JURI/7/01362




Documentation gateway				
European Parliament				
Document type	Committee	Reference	Date	Summary
Committee draft report		<a href="#">PE441.200</a>	23/02/2011	
Amendments tabled in committee		<a href="#">PE464.765</a>	01/07/2011	

Amendments tabled in committee		<a href="#">PE483.680</a>	27/02/2012	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A7-0045/2012</a>	06/03/2012	<a href="#">Summary</a>
Text adopted by Parliament, 1st reading/single reading		<a href="#">T7-0068/2012</a>	13/03/2012	<a href="#">Summary</a>

#### Council of the EU

Document type	Reference	Date	Summary
Draft final act	<a href="#">00014/2012/LEX</a>	04/06/2012	

#### European Commission

Document type	Reference	Date	Summary
Legislative proposal	<a href="#">COM(2009)0154</a> 	14/10/2009	<a href="#">Summary</a>
Document attached to the procedure	<a href="#">SEC(2009)0410</a> 	14/10/2009	
Document attached to the procedure	<a href="#">SEC(2009)0411</a> 	14/10/2009	
Commission response to text adopted in plenary	<a href="#">SP(2012)323</a>	02/05/2012	

#### National parliaments

Document type	Parliament/Chamber	Reference	Date	Summary
Contribution	<a href="#">HU_PARLIAMENT</a>	<a href="#">COM(2009)0154</a>	27/11/2009	
Contribution	<a href="#">AT_BUNDESRAT</a>	<a href="#">COM(2009)0154</a>	07/12/2009	
Contribution	<a href="#">CZ_SENATE</a>	<a href="#">COM(2009)0154</a>	10/12/2009	
Contribution	<a href="#">BE_SENATE</a>	<a href="#">COM(2009)0154</a>	11/12/2009	
Contribution	<a href="#">NL_SENATE</a>	<a href="#">COM(2009)0154</a>	16/12/2009	
Contribution	<a href="#">DE_BUNDESTAG</a>	<a href="#">COM(2009)0154</a>	16/12/2009	
Contribution	<a href="#">LV_PARLIAMENT</a>	<a href="#">COM(2009)0154</a>	16/12/2009	
Contribution	<a href="#">NL_CHAMBER</a>	<a href="#">COM(2009)0154</a>	16/12/2009	
Contribution	<a href="#">BE_CHAMBER</a>	<a href="#">COM(2009)0154</a>	17/12/2009	
Contribution	<a href="#">FR_SENATE</a>	<a href="#">COM(2009)0154</a>	17/12/2009	
Contribution	<a href="#">CZ_CHAMBER</a>	<a href="#">COM(2009)0154</a>	17/12/2009	
Contribution	<a href="#">FR_ASSEMBLY</a>	<a href="#">COM(2009)0154</a>	17/12/2009	
Contribution	<a href="#">EL_PARLIAMENT</a>	<a href="#">COM(2009)0154</a>	17/12/2009	
Contribution	<a href="#">PT_PARLIAMENT</a>	<a href="#">COM(2009)0154</a>	17/12/2009	
Contribution	<a href="#">FR_SENATE</a>	<a href="#">COM(2009)0154</a>	23/12/2009	

Contribution	<a href="#">LU_CHAMBER</a>	<a href="#">COM(2009)0154</a>	25/12/2009	
Contribution	<a href="#">BG_PARLIAMENT</a>	<a href="#">COM(2009)0154</a>	05/01/2010	
Contribution	<a href="#">IT_SENATE</a>	<a href="#">COM(2009)0154</a>	09/02/2010	
Contribution	<a href="#">UK_HOUSE-OF-LORDS</a>	<a href="#">COM(2009)0154</a>	31/03/2010	
Contribution	<a href="#">BE_CHAMBER</a>	<a href="#">COM(2009)0154</a>	06/05/2010	

#### Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	<a href="#">CES0962/2010</a>	14/07/2010	

#### Additional information

Source	Document	Date
National parliaments	<a href="#">IPEX</a>	
European Commission	<a href="#">EUR-Lex</a>	

#### Final act

[Corrigendum to final act 32012R0650R\(01\)](#)  
OJ L 344 14.12.2012, p. 0003

[Summary](#)

[Corrigendum to final act 32012R0650R\(03\)](#)  
OJ L 060 02.03.2013, p. 0140

[Summary](#)

[Regulation 2012/0650](#)  
OJ L 201 27.07.2012, p. 0107

[Summary](#)

## Jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and creation of a European Certificate of Succession

2009/0157(COD) - 04/07/2012 - Corrigendum to final act

**Corrigendum to Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession** (*Official Journal of the European Union L 201 of 27 July 2012*)

Page 134, Article 84, second paragraph:

*for:* '... except for Articles 77 and 78, which shall apply from 16 January 2014 ...',

*read:* '... except for Articles 77 and 78, which shall apply from 16 November 2014 ...'.

# Jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and creation of a European Certificate of Succession

2009/0157(COD) - 04/07/2012 - Corrigendum to final act

Corrigendum to Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession ([Official Journal of the European Union L 201 of 27 July 2012](#))

On page 132, Article 78(1):

for:

'1. By 16 January 2014, the Member States shall communicate to the Commission: ...',

read:

'1. By 16 November 2014, the Member States shall communicate to the Commission: ...'.

# Jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and creation of a European Certificate of Succession

2009/0157(COD) - 06/03/2012 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Legal Affairs adopted the report drafted by Kurt LECHNER (EPP, DE) on the proposal for a regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession.

The committee recommends that the European Parliament's position adopted at first reading under the ordinary legislative procedure should be to amend the Commission proposal. The proposed amendments are the result of a joint discussion between the members of the committee and the Member States' representatives. They may be summarised as follows:

**Scope:** the scope of the Regulation includes all civil-law aspects of succession to the estate of a deceased person, namely all forms of transfer of assets, rights and obligations by reason of death, be it a voluntary transfer under a disposition of property upon death, or a transfer through intestate succession. The Regulation does not apply to revenue matters, or to administrative matters of a public-law nature.

The following are **excluded from the scope** of the Regulation, amongst others:

- questions relating to **matrimonial property regimes** and property regimes of relationships deemed by the law applicable to such relationships to have comparable effects to marriage;
- the formal validity of dispositions of property upon death made orally;
- **property rights, interests and assets** created or transferred otherwise than by succession,
- questions governed by the law applicable to **companies and other bodies**, corporate or unincorporated
- the creation, administration and **dissolution of trusts**;
- **any recording in a register of rights in immovable or movable property.**

This Regulation **does not affect the competence of the authorities of the Member States** to deal with matters of succession.

**Broad definition of 'court':** the amended text gives the term 'court' a broad meaning so as to cover not only courts in the true sense of the word, exercising judicial functions, but also the notaries or registry offices in some Member States who or which, in certain matters of succession, exercise judicial functions like courts, and the notaries and legal professionals who, in some Member States, exercise judicial functions in a given succession by delegation of power by a court.

**Jurisdiction and applicable law:** the Regulation provides that the general connecting factor for the purposes of determining both jurisdiction and the applicable law should be the **habitual residence of the deceased at the time of death**.

A person **may choose** as the law to govern his succession as a whole **the law of the State whose nationality he possesses** at the time of making the choice or at the time of death.

Where, by way of exception, it is clear from all the circumstances of the case that, at the time of death, the deceased was manifestly more closely connected with a State other than the State whose law would be applicable, the law applicable to the succession shall be the law of that other State.

A person possessing multiple nationalities may choose the law of any of the States whose nationality he possesses at the time of making the choice.

The choice shall be made expressly in a declaration in the form of a disposition of property upon death or shall be demonstrated by the terms of such a disposition.

**Universal application:** any law specified by this Regulation shall be applied whether or not it is the law of a Member State.

**Choice-of-court agreement:** where the law chosen by the deceased to govern his succession is the law of a Member State, the parties concerned may agree that a court or the courts of the Member State of the chosen law are to have exclusive jurisdiction to rule on any succession matter. Such a choice-of-court agreement shall be expressed in writing, dated and signed by the parties concerned.

**Jurisdiction in the event of a choice of law:** the courts of a Member State whose law had been chosen by the deceased shall have jurisdiction to rule on the succession if: (a) a court previously seised has declined jurisdiction in the same case; (b) the parties to the proceedings have agreed to confer jurisdiction on a court or the courts of that Member State, or (c) the parties to the proceedings have expressly acknowledged the jurisdiction of the court seised.

**Closing of own motion proceedings in the event of a choice of law:** a court seised of its own motion of a succession case shall close the proceedings if the parties to the proceedings have agreed to settle the succession amicably out of court in the Member State whose law had been chosen by the deceased.

**Subsidiary jurisdiction:** where the habitual residence of the deceased at the time of death is not located in a Member State, the courts of a Member State in which succession assets are located shall nevertheless have jurisdiction to rule on the succession as a whole in so far as: the deceased had the nationality of that Member State at the time of death; or failing that, the deceased previously had his habitual residence in that Member State, provided that, at the time the court is seised, a period of not more than five years has elapsed since that habitual residence changed.

**Forum necessitatis:** where no court of a Member State has jurisdiction pursuant to other provisions of this Regulation, the courts of a Member State may, on an exceptional basis, rule on the succession if proceedings cannot reasonably be brought or conducted or would be impossible in a third State with which the case is closely connected. The case must have a sufficient connection with the Member State of the court seised.

**Limitation of proceedings:** where the estate of the deceased comprises assets located in a third State, the court seised to rule on the succession may, at the request of one of the parties, decide not to rule on one or more of such assets if it may be expected that its decision in respect of those assets will not be recognised and, where applicable, declared enforceable in that third State.

**Of inheritance:** an inheritance is a type of disposition of property upon death whose admissibility and acceptance vary from one Member State to another. To facilitate the acceptance in the Member States of estate acquired through an inheritance, settlement determines which law should govern the admissibility of such pacts, their validity on the merits and effects binding between the parties, including with regard to the conditions of their dissolution.

**Special rules on the appointment and powers of an administrator of the estate in certain situations:** where the appointment of an administrator is mandatory or mandatory upon request under the law of the Member State whose courts have jurisdiction to rule on the succession pursuant to this Regulation and the law applicable to the succession is a foreign law, the courts of that Member State may, when seised, appoint one or more administrators of the estate under their own law, subject to the conditions laid down in this Regulation.

**Estate without a claimant:** to the extent that, under the law applicable to the succession pursuant to this Regulation, there is no heir or legatee for any assets under a disposition of property upon death and no natural person is an heir by operation of law, the application of the law so determined shall not preclude the right of a Member State or of an entity appointed for that purpose by that Member State to appropriate under its own law the assets of the estate located on its territory, provided that the creditors are entitled to seek satisfaction of their claims out of the assets of the succession as a whole.

**Recognition:** a decision given in a Member State shall be recognised in the other Member States without any special procedure being required. Any interested party who raises the recognition of a decision as the principal issue in a dispute may apply for that decision to be recognised. A decision shall not be recognised if such recognition is manifestly contrary to public policy (*ordre public*) in the Member State in which recognition is sought. Under no circumstances may a decision given in a Member State be reviewed as to its substance.

**Territorial jurisdiction:** to determine whether a party is domiciled in the Member State of enforcement, the court seised shall apply the internal law of that Member State. The application for a declaration of enforceability shall be submitted to the court or competent authority of the Member State of enforcement notified by that Member State to the Commission. The local jurisdiction shall be determined by reference to the place of domicile of the party against whom enforcement is sought, or to the place of enforcement.

**Acceptance of authentic instruments:** an authentic instrument established in a Member State shall have the same evidentiary effects in another Member State as it has in the Member State of origin, or the most comparable effects, provided that this is not manifestly contrary to public policy (*ordre public*) in the Member State concerned.

A person wishing to use an authentic instrument in another Member State may ask the authority establishing the authentic instrument in the Member State of origin to fill in the form to be established in accordance with the advisory procedure referred to in the Regulation describing the evidentiary effects which the authentic instrument produces in the Member State of origin.

**European Certificate of Succession:** this Regulation **creates** a European Certificate of Succession which shall be issued for use in another Member State. The Certificate shall produce its effects in all Member States, without any special procedure being required. The Certificate is for use by heirs and legatees having direct rights in the succession and executors of wills or administrators of the estate who, in another Member State, need to invoke their status or to exercise respectively their rights as heirs or legatees and/or their powers as executors of wills or administrators of the estate. The Certificate may be used, in particular, to demonstrate one or more of the following specific elements:

- the status and/or the rights of each heir or, as the case may be, each legatee mentioned in the Certificate and their respective shares of the estate;
- the attribution of a specific asset or specific assets forming part of the estate to the heir(s) or, as the case may be, the legatee(s) mentioned in the Certificate;
- the powers of the person mentioned in the Certificate to execute the will or administer the estate.

The Certificate shall be **issued upon application** by any person referred to in this Regulation. For the purposes of submitting an application, the applicant may use the form to be established in accordance with the advisory procedure.

The issuing authority shall issue the Certificate without delay in accordance with the procedure laid down in this Chapter when the elements to be certified have been established under the law applicable to the succession or under any other law applicable to specific elements.

The Certificate shall contain **information**, to the extent required for the purpose for which it is issued.

**Effects of the Certificate:** the Certificate shall produce its effects in all Member States, without any special procedure being required. The person mentioned in the Certificate as the heir, legatee, executor of the will or administrator of the estate shall be presumed to have the status mentioned in the Certificate and/or to hold the rights or the powers stated in the Certificate, with no conditions and/or restrictions being attached to those rights or powers other than those stated in the Certificate. Decisions taken by the issuing authority pursuant to Article 40a may be challenged by any person entitled to apply for a Certificate. The effects of the Certificate may be suspended.

**Information made available to the public:** the Member States shall, with a view to making the information available to the public within the framework of the European Judicial Network in civil and commercial matters, provide the Commission with a short summary of their national legislation and procedures relating to succession, including information on the type of authority which has competence in matters of succession and information on the type of authority competent to receive declarations of acceptance or waiver of the succession, of a legacy or of a reserved share.

The Member States shall also provide fact sheets listing all the documents and/or information usually required for the purposes of registration of immovable property located on their territory.

**Relations with existing international conventions:** this Regulation shall not affect the application of international conventions to which one or more Member States are party at the time of adoption of this Regulation and which concern matters covered by this Regulation.

This Regulation shall not preclude the application of the Convention of 19 November 1934 between Denmark, Finland, Iceland, Norway and Sweden comprising international private law provisions on succession, wills and estate administration.

**Review:** by ten years after the date of application of this Regulation, the Commission shall submit a report on the application of this Regulation, including an evaluation of any practical problems encountered in relation to parallel out-of-court settlements of succession cases in different Member States or an out-of-court settlement in one Member State effected in parallel with a settlement before a judicial authority in another Member State. The report shall be accompanied, where appropriate, by proposals for amendments.

## Jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and creation of a European Certificate of Succession

2009/0157(COD) - 13/03/2012 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 589 votes to 21 with 79 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession. Parliament adopted its position in first reading following the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise negotiated between Parliament and Council. They amend the Commission proposal as follows:

**Scope:** the regulation brings together provisions on jurisdiction, on applicable law, on recognition or, as the case may be, acceptance, enforceability and enforcement of decisions, authentic instruments and court settlements and on the European Certificate of Succession.

The scope of the Regulation includes all civil-law aspects of succession to the estate of a deceased person, namely all forms of transfer of assets, rights and obligations by reason of death, be it a voluntary transfer under a disposition of property upon death, or a transfer through intestate succession. The Regulation does not apply to revenue matters, or to administrative matters of a public-law nature.

The following are **excluded from the scope** of the Regulation, amongst others:

- questions relating to **matrimonial property regimes** and property regimes of relationships deemed by the law applicable to such relationships to have comparable effects to marriage;

- the formal validity of dispositions of property upon death made orally;
- **property rights, interests and assets** created or transferred otherwise than by succession,
- questions governed by the law applicable to **companies and other bodies**, corporate or unincorporated
- the creation, administration and **dissolution of trusts**;
- **any recording in a register of rights in immovable or movable property**, including the legal requirements for such recording, and the effects of recording or failing to record such rights in a register. It should therefore be the law of the Member State in which the register is kept (for immoveable property, the *lex rei sitae*) which determines under what legal conditions and how the recording must be carried out and which authorities, such as land registers or notaries, are in charge of checking that all requirements are met and that the documentation presented or established is sufficient or contains the necessary information.

This Regulation **does not affect the competence of the authorities of the Member States** to deal with matters of succession.

**Broad definition of 'court'**: the amended text gives the term 'court' a broad meaning so as to cover not only courts in the true sense of the word, exercising judicial functions, but also the notaries or registry offices in some Member States who or which, in certain matters of succession, exercise judicial functions like courts, and the notaries and legal professionals who, in some Member States, exercise judicial functions in a given succession by delegation of power by a court.

**Jurisdiction and applicable law**: the Regulation provides that the general connecting factor for the purposes of determining both jurisdiction and the applicable law should be the **habitual residence of the deceased at the time of death**.

A person **may choose** as the law to govern his succession as a whole **the law of the State whose nationality he possesses** at the time of making the choice or at the time of death.

Where, by way of exception, it is clear from all the circumstances of the case that, at the time of death, the deceased was manifestly more closely connected with a State other than the State whose law would be applicable, the law applicable to the succession shall be the law of that other State.

A person possessing multiple nationalities may choose the law of any of the States whose nationality he possesses at the time of making the choice.

The choice shall be made expressly in a declaration in the form of a disposition of property upon death or shall be demonstrated by the terms of such a disposition.

Universal application: any law specified by this Regulation shall be applied whether or not it is the law of a Member State.

**Choice-of-court agreement**: where the law chosen by the deceased to govern his succession is the law of a Member State, the parties concerned may agree that a court or the courts of the Member State of the chosen law are to have exclusive jurisdiction to rule on any succession matter. Such a choice-of-court agreement shall be expressed in writing, dated and signed by the parties concerned.

**Jurisdiction in the event of a choice of law**: the courts of a Member State whose law had been chosen by the deceased shall have jurisdiction to rule on the succession if: (a) a court previously seised has declined jurisdiction in the same case; (b) the parties to the proceedings have agreed to confer jurisdiction on a court or the courts of that Member State, or (c) the parties to the proceedings have expressly acknowledged the jurisdiction of the court seised.

**Closing of own motion proceedings in the event of a choice of law**: a court seised of its own motion of a succession case shall close the proceedings if the parties to the proceedings have agreed to settle the succession amicably out of court in the Member State whose law had been chosen by the deceased.

**Subsidiary jurisdiction**: where the habitual residence of the deceased at the time of death is not located in a Member State, the courts of a Member State in which succession assets are located shall nevertheless have jurisdiction to rule on the succession as a whole in so far as: the deceased had the nationality of that Member State at the time of death; or failing that, the deceased previously had his habitual residence in that Member State, provided that, at the time the court is seised, a period of not more than five years has elapsed since that habitual residence changed.

**Forum necessitatis**: where no court of a Member State has jurisdiction pursuant to other provisions of this Regulation, the courts of a Member State may, on an exceptional basis, rule on the succession if proceedings cannot reasonably be brought or conducted or would be impossible in a third State with which the case is closely connected. The case must have a sufficient connection with the Member State of the court seised.

**Limitation of proceedings**: where the estate of the deceased comprises assets located in a third State, the court seised to rule on the succession may, at the request of one of the parties, decide not to rule on one or more of such assets if it may be expected that its decision in respect of those assets will not be recognised and, where applicable, declared enforceable in that third State.

**Of inheritance**: an inheritance is a type of disposition of property upon death whose admissibility and acceptance vary from one Member State to another. To facilitate the acceptance in the Member States of estate acquired through an inheritance, settlement determines which law should govern the admissibility of such pacts, their validity on the merits and effects binding between the parties, including with regard to the conditions of their dissolution.



**Special rules on the appointment and powers of an administrator of the estate in certain situations:** where the appointment of an administrator is mandatory or mandatory upon request under the law of the Member State whose courts have jurisdiction to rule on the succession pursuant to this Regulation and the law applicable to the succession is a foreign law, the courts of that Member State may, when seised, appoint one or more administrators of the estate under their own law, subject to the conditions laid down in this Regulation.

**Estate without a claimant:** to the extent that, under the law applicable to the succession pursuant to this Regulation, there is no heir or legatee for any assets under a disposition of property upon death and no natural person is an heir by operation of law, the application of the law so determined shall not preclude the right of a Member State or of an entity appointed for that purpose by that Member State to appropriate under its own law the assets of the estate located on its territory, provided that the creditors are entitled to seek satisfaction of their claims out of the assets of the succession as a whole.

**Renvoi:** the text stipulates that the application of the law of any third State specified by this Regulation shall mean the application of the rules of law in force in that State, including its rules of private international law in so far as those rules make a renvoi: (a) to the law of a Member State, or (b) to the law of another third State which would apply its own law.

**Non-unified systems - internal conflicts of laws:** in relation to a State which has two or more systems of law or sets of rules applicable to different categories of persons in respect of succession, any reference to the law of that State shall be construed as referring to the system of law or set of rules determined by the rules in force in that State. In the absence of such rules, the system of law or the set of rules with which the deceased had the closest connection shall apply.

A Member State which comprises several territorial units each of which has its own rules of law in respect of succession shall not be required to apply this Regulation to conflicts of laws arising between such units only.

**Recognition:** a decision given in a Member State shall be recognised in the other Member States without any special procedure being required. Any interested party who raises the recognition of a decision as the principal issue in a dispute may apply for that decision to be recognised. A decision shall not be recognised if such recognition is manifestly contrary to public policy (*ordre public*) in the Member State in which recognition is sought. Under no circumstances may a decision given in a Member State be reviewed as to its substance.

**Territorial jurisdiction:** to determine whether a party is domiciled in the Member State of enforcement, the court seised shall apply the internal law of that Member State. The application for a declaration of enforceability shall be submitted to the court or competent authority of the Member State of enforcement notified by that Member State to the Commission. The local jurisdiction shall be determined by reference to the place of domicile of the party against whom enforcement is sought, or to the place of enforcement.

**Acceptance of authentic instruments:** an authentic instrument established in a Member State shall have the same evidentiary effects in another Member State as it has in the Member State of origin, or the most comparable effects, provided that this is not manifestly contrary to public policy (*ordre public*) in the Member State concerned.

A person wishing to use an authentic instrument in another Member State may ask the authority establishing the authentic instrument in the Member State of origin to fill in the form to be established in accordance with the advisory procedure referred to in the Regulation describing the evidentiary effects which the authentic instrument produces in the Member State of origin.

**European Certificate of Succession:** this Regulation **creates** a European Certificate of Succession which shall be issued for use in another Member State. The Certificate shall produce its effects in all Member States, without any special procedure being required. The Certificate is for use by heirs and legatees having direct rights in the succession and executors of wills or administrators of the estate who, in another Member State, need to invoke their status or to exercise respectively their rights as heirs or legatees and/or their powers as executors of wills or administrators of the estate. The Certificate may be used, in particular, to demonstrate one or more of the following specific elements:

- the status and/or the rights of each heir or, as the case may be, each legatee mentioned in the Certificate and their respective shares of the estate;
- the attribution of a specific asset or specific assets forming part of the estate to the heir(s) or, as the case may be, the legatee(s) mentioned in the Certificate;
- the powers of the person mentioned in the Certificate to execute the will or administer the estate.

The Certificate shall be **issued upon application** by any person referred to in this Regulation. For the purposes of submitting an application, the applicant may use the form to be established in accordance with the advisory procedure.

The issuing authority shall issue the Certificate without delay in accordance with the procedure laid down in this Chapter when the elements to be certified have been established under the law applicable to the succession or under any other law applicable to specific elements.

The Certificate shall contain the **following information**, to the extent required for the purpose for which it is issued:

- the name and address of the issuing authority; the reference number of the file; the elements on the basis of which the issuing authority considers itself competent to issue the Certificate; the date of issue;
- details concerning the applicant: surname (if applicable, maiden name), given name(s), sex, date and place of birth, civil status, nationality, identification number (if applicable), address and relationship to the deceased, if any;
- details concerning the deceased: surname (if applicable, maiden name), given name(s), sex, date and place of birth, civil status, nationality, identification number (if applicable), address at the time of death, date and place of death;
- details concerning the beneficiaries: surname (if applicable, maiden name), given name(s) and identification number (if applicable);

- information concerning a marriage contract entered into by the deceased or, if applicable, a contract entered into by the deceased in the context of a relationship deemed by the law applicable to such a relationship to have comparable effects to marriage, and information concerning the matrimonial property regime or equivalent property regime;
- the law applicable to the succession and the elements on the basis of which that law has been determined;
- information as to whether the succession is a succession upon intestacy or under a disposition of property upon death, including information concerning the elements giving rise to the rights and/or powers of the heirs, legatees, executors of wills or administrators of the estate;
- if applicable, information in respect of each beneficiary concerning the nature of the acceptance or waiver of the succession;
- the share for each heir and, if applicable, the list of rights and/or assets for any given heir;
- the list of rights and/or assets for any given legatee;
- the restrictions on the rights of the heir(s) and, as appropriate, legatee(s) under the law applicable to the succession and/or under the disposition of property upon death;
- the powers of the executor of the will and/or the administrator of the estate and the restrictions on those powers under the law applicable to the succession and/or under the disposition of property upon death.

**Effects of the Certificate:** the Certificate shall produce its effects in all Member States, without any special procedure being required. The person mentioned in the Certificate as the heir, legatee, executor of the will or administrator of the estate shall be presumed to have the status mentioned in the Certificate and/or to hold the rights or the powers stated in the Certificate, with no conditions and/or restrictions being attached to those rights or powers other than those stated in the Certificate. Decisions taken by the issuing authority pursuant to Article 40a may be challenged by any person entitled to apply for a Certificate. The effects of the Certificate may be suspended.

**Information made available to the public:** the Member States shall, with a view to making the information available to the public within the framework of the European Judicial Network in civil and commercial matters, provide the Commission with a short summary of their national legislation and procedures relating to succession, including information on the type of authority which has competence in matters of succession and information on the type of authority competent to receive declarations of acceptance or waiver of the succession, of a legacy or of a reserved share.

The Member States shall also provide fact sheets listing all the documents and/or information usually required for the purposes of registration of immovable property located on their territory.

**Relations with existing international conventions:** this Regulation shall not affect the application of international conventions to which one or more Member States are party at the time of adoption of this Regulation and which concern matters covered by this Regulation.

This Regulation shall not preclude the application of the Convention of 19 November 1934 between Denmark, Finland, Iceland, Norway and Sweden comprising international private law provisions on succession, wills and estate administration.

**Review:** by ten years after the date of application of this Regulation, the Commission shall submit a report on the application of this Regulation, including an evaluation of any practical problems encountered in relation to parallel out-of-court settlements of succession cases in different Member States or an out-of-court settlement in one Member State effected in parallel with a settlement before a judicial authority in another Member State. The report shall be accompanied, where appropriate, by proposals for amendments.

## Jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and creation of a European Certificate of Succession

2009/0157(COD) - 26/04/2012

The presidency informed delegations on the **state of play** regarding a number of current legislative proposals and in particular on the draft regulation on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession.

The European Parliament had adopted its position in March 2012. The amendment adopted corresponds to what was agreed between the institutions and ought therefore to be acceptable to the Council. The Council is expected to adopt the regulation in **June 2012**.

## Jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and creation of a European Certificate of Succession

2009/0157(COD) - 04/07/2012 - Final act

**PURPOSE:** to allow citizens the organisation in advance of their succession in a Union context and the protection of the rights of heirs and legatees and of persons close to the deceased, as well as of the creditors of the succession.

**LEGISLATIVE ACT:** Regulation (EU) No 650/2012 of the European Parliament and the Council on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession.

CONTENTS: following an agreement with the European Parliament at first reading, the Council adopted a regulation which will **speed up succession procedures in cross-border situations** and will make it easier and less costly for heirs and legatees as well as for persons entitled to reserved shares to take possession of their respective parts of the estate.

The scope of the Regulation includes **all civil-law aspects of succession to the estate of a deceased person**, namely all forms of transfer of assets, rights and obligations by reason of death, be it a voluntary transfer under a disposition of property upon death, or a transfer through intestate succession. The Regulation shall not apply to revenue, customs or administrative matters.

The following, among others, **shall be excluded from the scope of this Regulation**: i) the status of natural persons, as well as family relationships and relationships; ii) questions relating to matrimonial property regimes and property regimes of relationships; iii) maintenance obligations other than those arising by reason of death; iv) questions governed by the law of companies and other bodies, corporate or unincorporated.

The new Regulation will **respect the existing systems of dealing with succession matters in the various EU member states** and will not impose a judicial system on those member states in which succession matters are currently settled out of court.

The main elements of the Regulation are the following:

**Jurisdiction and applicable law**: the basic rule will be that the law applicable to the succession will be the law of the State of the **deceased's habitual residence at the time of death**. If a person wants to plan his succession otherwise, he can choose the law of a State of which he is a national.

**Forum necessitatis**: where no court of a member state has jurisdiction pursuant to other provisions of this Regulation, the courts of a member state may, on an exceptional basis, rule on the succession if proceedings cannot reasonably be brought or conducted or would be impossible in a third State with which the case is closely connected. The case must have a sufficient connection with the member state of the court seized.

**Recognition**: succession decisions given by a court in any of the EU member states under the new Regulation will be recognised and enforceable throughout the EU. Likewise, authentic instruments issued by a notary in a succession matter in any of the EU member states will be accepted and enforceable throughout the EU.

**Certificate of Succession**: the new Regulation will create a European Certificate of Succession which will make it easier, for instance, for heirs to invoke their rights in another member state or for an executor of the will to exercise his powers in another member state.

The Certificate may be used, in particular, **to demonstrate one or more of the following specific points**:

- the status and/or the rights of each heir or, as the case may be, each legatee mentioned in the Certificate and their respective shares of the estate;
- the attribution of a specific asset or specific assets forming part of the estate to the heir(s) or, as the case may be, the legatee(s) mentioned in the Certificate;
- the powers of the person mentioned in the Certificate to execute the will or administer the estate.

The Certificate shall be issued upon application by any person covered by the Regulation. For the purposes of submitting an application, the applicant may use the form established in accordance with the advisory procedure referred to in the Regulation. The Certificate **shall produce its effects in all member states**, without any special procedure being required.

**Review**: By 18 August 2025 the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation, including an evaluation of any practical problems encountered in relation to parallel out-of-court settlements of succession cases in different member states or an out-of-court settlement in one member state effected in parallel with a settlement before a court in another member state. The report shall be accompanied, where appropriate, by proposals for amendments.

ENTRY INTO FORCE: 13/08/2012.

APPLICATION: This Regulation shall apply to the succession of persons who die on or after 17 August 2015.

The Regulation shall directly apply to all the Member States of the EU with the exception of Denmark, which has an option of non-participation in the field of justice and home affairs, and the United Kingdom and Ireland.

## **Jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and creation of a European Certificate of Succession**

2009/0157(COD) - 03/06/2010

After a public debate, the Council adopted political guidelines for future work ([9703/1/10 REV 1](#)) on proposed European rules concerning matters of succession as well as a European certificate of succession.

Ministers underlined the importance of the proposed regulation since it has the potential to make life easier for heirs, legatees and other interested parties. Not least, the proposed rules would take some of the stress out of succession planning by enabling people to choose the law that will govern the transmission of all their assets.

On 14 October 2009, the Commission adopted a proposal that aims at simplifying the rules on successions with an international dimension in the EU. The proposal provides for the application of a single criterion for determining both the jurisdiction of the authorities and the law applicable to a cross-border succession: the deceased's habitual place of residence. People living abroad will, however, be able to opt to have the law of their country of nationality apply to the entirety of their succession.

All assets making up a succession will thus be governed by one and the same law, thereby reducing the risk that different Member States will issue contradictory decisions. Similarly, a single authority will be competent for settling the succession.

Lastly, there will be full mutual recognition of decisions and authentic acts in succession matters.

Under the proposed regulation, a European Certificate of Succession would also be created to enable a person to prove their status as heir or their powers as administrator or executor of a succession without further formalities. At present, people sometimes have great difficulty exercising their rights. The result will be faster and cheaper procedures.

It is to be noted that Denmark, the United Kingdom and Ireland will not take part in the adoption and application of the proposed regulation.

## **Jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and creation of a European Certificate of Succession**

2009/0157(COD) - 14/10/2009 - Legislative proposal

**PURPOSE:** to eliminate all the obstacles to the free movement of persons arising out of the differences between the rules of the Member States governing international successions.

**PROPOSED ACT:** Regulation of the European Parliament and of the Council.

**BACKGROUND:** the significance of cross-border successions within the European Union has been highlighted in the impact assessment attached to the proposal. The diversity of both the rules under substantive law and the rules of international jurisdiction or of applicable law, the multitude of authorities to which international succession matters can be referred and the fragmentation of successions which can result from these divergent rules are obstacles to the free movement of persons in the Union. Today, such persons are therefore faced with considerable difficulties in asserting their rights with regard to an international succession. These divergent rules also prevent the full exercise of private property law, which, in accordance with the settled case law of the Court of Justice, forms an integral part of the fundamental rights which the Court ensures are respected.

**The adoption of a European instrument in the area of successions** was already one of the priorities of the 1998 Vienna Action Plan. The Hague Programme calls for the presentation of an instrument covering all the issues involved: applicable law, jurisdiction and recognition, administrative measures (certificates of inheritance, registration of wills).

Before this proposal was drawn up, a wide-ranging consultation exercise took place within the Member States, the other institutions and the public. The Commission was sent a "Study on international successions in the European Union", which had been drawn up by the German Institute of Notaries in November 2002. Its [Green Paper on successions and wills](#), which was published on 1 March 2005, elicited 60 or so replies and was followed by a public hearing on 30 November 2006.

The contributions received confirm the need for a Community instrument in this area and support the adoption of a proposal covering, among other things, questions concerning applicable law, jurisdiction, recognition and enforcement of decisions and the creation of a European Certificate of Succession. The adoption of such an instrument has received the support of the European Parliament.

**IMPACT ASSESSMENT:** the policy options have been split into the following two different sets, in order to take account of the different options to be considered:

### **1) Definition of policy options that address problems caused by national legislative differences concerning successions with transnational elements (Policy Options A)**

#### *No common EU level action*

- Policy Option A.1: Status quo.

#### *EU legislative action*

- Policy Option A.2: Harmonisation of jurisdiction rules and introduction of rules on automatic recognition and enforcement of judgments, other decisions and authentic acts/deeds.
- Policy Option A.3: Harmonisation of conflict of law rules.

- Policy Option A.4: Harmonisation of conflict of law rules and introduction of a European Certificate of Heir and Executor / Administrator in transnational successions.
- Policy Option A.5: Harmonisation of conflict of law rules and jurisdiction rules.
- Policy Option A.6: Harmonisation of conflict of law rules and jurisdiction rules, and introduction of rules on automatic recognition and enforcement of judgments, other decisions and authentic acts/deeds (A.2 plus A.3).
- **Policy Option A.7: Harmonisation of conflict of law rules and jurisdiction rules, and introduction of rules on automatic recognition and enforcement of judgments, other decisions and authentic acts/deeds, and introduction of a Certificate of Heir and Executor /Administrator in transnational successions.**

#### *Non-legislative action*

- Policy Option A.8: Establishment of a database / knowledge management system on conflict of laws, jurisdiction rules and competent bodies.
- Policy Option A.9: EU wide information campaign on succession (legislation and existing /forthcoming instruments).

## **2) Definition of policy options that address problems of identifying wills abroad (Policy Options B)**

#### *No common EU level action*

- Policy Option B.1: Status quo

#### *EU level action (legislation and funding)*

- **Policy option B.2: Commission Recommendation on the establishment of interconnected national registers of wills and organisation of information campaigns.**
- Policy option B.3 Compulsory establishment of interconnected national registers of wills.
- Policy option B.4 Establishment of a central EU Register of Wills.

#### *Non-legislative action*

- Policy Option B.5: Creation of a webpage on existing registers of wills and national rules.
- Policy Option B.6: National information campaigns on wills (legislation and existing / forthcoming instruments).

**The preferred option is a combination of policy options A.7 and B.2.** A.7 is the preferred one as it would address most of the current problems and lead to the greatest cost reduction (maximum 30%). B.2 obtains is also preferred in that it takes account of the fact that the identification of wills is to a certain extent a national problem and is likely to remain such even in the long term (despite the trend towards citizens having increasing cross-border links). This preference is also in line with the rating made by the stakeholders.

**CONTENT:** the objective of this proposal is to enable people living in the European Union to organise their succession in advance and effectively to guarantee the rights of heirs and/or legatees and of other persons linked to the deceased, as well as creditors of the succession.

The main elements of the proposal are as follows:

**Scope and definitions:** the concept of “succession” must be interpreted in an autonomous manner and encompasses all the elements of a succession, in particular its handover, administration and liquidation.

This proposal shall apply to successions to the estates of deceased persons. It shall not apply to revenue, customs or administrative matters. Other areas to be excluded include: maintenance obligations; questions covered by company law; the constitution, functioning and dissolving of trusts; the nature of rights *in rem* relating to property and publicising these rights.

**Jurisdiction:** the rules of legal jurisdiction relating to succession vary considerably between the Member States. This leads to positive conflicts, where the courts in several States declare themselves to be competent, or negative conflicts, where no court declares itself to be competent. In order to avoid these difficulties for citizens, a uniform rule is required.

**As regards applicable law,** the choice to create a single scheme by means of a regulation allows the succession to be subjected to a single law, thereby avoiding these disadvantages.

The proposal provides for the application of a single criterion for determining both the jurisdiction of the authorities and the law applicable to a cross-border succession: the deceased's habitual place of residence.

People living abroad will, however, be able to opt to have the law of their country of nationality apply to the entirety of their succession. All assets making up a succession will thus be governed by one and the same law, thereby reducing the risk that different Member States will issue contradictory decisions. Likewise, a single authority - that of the country of habitual residence - will be competent for settling the succession; it will, however, be able to refer the matter to the competent authority of the country of nationality where the latter is better placed to hear the case.

The Regulation has removed the possibility of choosing as the law applicable to succession the law applicable to matrimonial property scheme of the testator. Such a provision would have allowed multiple choices where, for the matrimonial property schemes, the spouses benefit from greater flexibility in their choice of applicable law.

The proposal includes rules governing the law applicable to the agreements as to succession and joint wills used in certain States, e.g. in order to organise the transfer of a company and for couples to allow the surviving spouse to benefit from joint property.

The proposal also includes an Article which takes into account the specific features of *common law* legal systems, such as the English legal system, where the heirs do not directly acquire the rights of the deceased upon the latter's death but where the succession is managed by an administrator appointed and supervised by the judge.

Lastly, recourse to public policy must occur in exceptional circumstances only. Differences between the laws relating to the protection of the legitimate interests of the relatives of the deceased must not be used to justify its use, as this would be incompatible with the objective of ensuring the application of a single law to all of the succession property.

**Recognition and enforcement:** provision is made for the recognition of all the decisions and legal transactions in order to give substance in succession matters to the principle of mutual recognition, which is based on the principle of mutual trust. The grounds for non-recognition have therefore been kept to the necessary minimum.

**Authentic instruments:** in view of the practical importance of authentic instruments in succession matters, this Regulation should ensure their recognition in order to allow their free movement. This recognition means that they will enjoy the same full and complete evidentiary effect in respect of the contents of the recorded instruments and the facts contained therein as that of national authentic instruments or on the same basis as in their country of origin, a presumption of authenticity, and an enforceable nature within the limits set by this Regulation.

**European Certificate of Succession:** in order to enable international successions to be settled rapidly, this Regulation introduces a European Certificate of Succession. To facilitate its circulation in the Union, a uniform model certificate should be adopted and an authority appointed which would have the international competence to issue it. This certificate does not replace existing certificates in certain Member States. In the Member State of the competent authority, the capacity of heir and the powers of an administrator or executor of the succession must therefore be proven according to the domestic procedure.

**BUDGETARY IMPLICATIONS:** the proposal has no implications for the Community budget.